

## **REMARKS**

The Advisory Action dated March 12, 2003 has been carefully considered, and the present Amendment is submitted with a Request for Continued Examination. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present application in condition for allowance. Reconsideration is respectfully requested.

By the present Amendment, claims 3, 4, 6-8 and 29-47 have been cancelled and claims 48-74 have been added. Newly added claims 48-52 include limitations from claims 29-33, respectively. Claims 53-58 include limitations from claims 3, 4, 8, 36, 7, and 37, respectively. Claim 59 includes limitations from the specification at page 6, lines 15-20; claim 60 includes limitations from claim 29. Claims 61 and 62 include limitations from claims 34 and 35, respectively. Claim 63 includes limitations from claim 6. Claims 64-71 include limitations from claims 38-45, respectively. Claim 72 includes limitations from the specification at page 5, lines 18-21. Claims 73 and 74 include limitations from claims 46 and 47, respectively. Since it is believed that these changes do not involve any introduction of new matter, entry is believed to be in order and is respectfully requested.

Applicants note that claims 48-64 and 69-72 read upon the elected species comprising phytoestrogen or phytoandrogen. Claims 48-49, 53-65, and 69-74 read upon the elected species comprising carnitine. Claims 48-60, 62-69, and 71-74 read upon the elected species comprising cereal. Claims 48-52, 54, 55, 57-64, and 69-72 read upon the elected species comprising genistein.

In the Final Official Action dated November 12, 2002, claims 3-4, 6-8, 29-30 and 35-37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jackson et al (WO 98/04248) in view of Fort (DE 29805782 U1). The Examiner asserted that Jackson et al teach a dietary supplement composition for post-menopausal women containing 1-50 mg

phytoestrogen, and asserted that Jackson et al specify genistin. The Examiner further asserted that the Jackson et al composition may be formulated with cereal. The Examiner acknowledged, however, that Jackson et al do not teach compositions incorporating carnitine. The Examiner therefore relied upon the Fort reference, asserting that Fort teaches a dietary cereal containing carnitine. The Examiner further asserted that it would have been obvious to one of ordinary skill in the art to add carnitine to the composition of Jackson et al to achieve the beneficial effects of supplementing the dietary needs for post-menopausal women.

Applicants responded with a Request for Reconsideration, followed by the March 12, 2003 Advisory Action. In this Advisory Action, the Examiner indicated that the Request for Reconsideration had been considered, but that the arguments presented therein had not overcome the issued rejection. At this time, the Examiner provided a translation of the German Fort reference and asserted that carnitine supports the activity of the heart muscle and increases stability to stress.

While Applicants traverse the Examiner's positions in the Official Action and the Advisory Action, the present Amendment is submitted to expedite prosecution. More particularly, as will be set forth in detail below, it is believed that the food products defined by claims 48-74 are non-obvious over Jackson et al in view of Fort. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

According to claim 48 of the present application, a food product comprises a dietary composition including phytoestrogen, phytoandrogen or a mixture thereof, and at least one component selected from the group consisting of carnitine, inulin, conjugated linoleic acid, and fructose oligosaccharide. The food product further comprises instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy.

According to claim 60 of the present application, a food product comprises a dietary composition including a food base, phytoestrogen, phytoandrogen or a mixture thereof, and at least one component selected from the group consisting of carnitine, inulin, conjugated linoleic acid, and fructose oligosaccharide. The food product further comprises instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy.

According to claim 64 of the present application, a food product comprises a dietary composition including a food base and a component comprising phytoestrogen, phytoandrogen, or estrogen or androgen derived from a fungal or microbial source, or a mixture of thereof, in an amount sufficient to reduce the weight gain normally incurred in a non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy, or post menopause, when the dietary composition is administered to the non-human mammal on a regular basis, and at least one component selected from the group consisting of carnitine, inulin, conjugated linoleic acid and fructose oligosaccharide. The food product further comprises instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy.

Jackson et al disclose dietary supplements that supply a variety of nutrients to supplement the dietary needs of women in order to prevent or reduce life-stage associated health risks during each principle adult life stage (page 8, lines 6-16). The Jackson et al compositions comprise specified amounts of calcium, magnesium, boron, copper, manganese, zinc, iron, folic acid, chromium, vitamin D, B<sub>12</sub>, B<sub>6</sub>, E, and C, and phytoestrogen in a biologically acceptable carrier. Applicants find nothing in Jackson et al to suggest a food

product comprising a dietary composition and further comprising instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy. Applicants find nothing in Jackson et al to suggest that modification of the disclosed compositions could be useful to either improve the Jackson et al dietary supplement or to create a food product to be administered to prevent weight gain in mammals subsequent to neutering, castration, spaying, ovariectomy or ovariectomy, or post menopause, as provided by food products of the present invention.

Fort discloses a dietary food supplement that, due to the presence of L-carnitin and lecithin, helps to convert body fat into energy and to increase the useful conversion of sugar.

However, Applicants find no teaching or suggestion in Jackson et al or Fort relating to a food product comprising a dietary composition and instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy, as required by claim 48, claim 60, and claim 64. To establish *prima facie* obviousness of the claimed invention, all of the claim limitations must be taught or suggested by the prior art, *In re Royka*, 180 U.S.P.Q. 580 (CCPA 1974). The mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification, *In re Mills*, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); *In re Fritch*, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In order for a combination of references to render an invention obvious, a combination of the teachings of all or any of the references must suggest, expressly or by implication, the possibility of achieving further improvement by combining such teachings along the lines of the invention, *In re Sernaker*, 217 U.S.P.Q. 1, 5 (Fed. Cir. 1983). Applicants find no

suggestion, express or implied, relating to a food product comprising a dietary composition and instructions for administering the dietary composition to a non-human mammal in an amount sufficient to reduce weight gain normally incurred in the non-human mammal type subsequent to neutering, castration, spaying, ovariectomy or ovariectomy.

Moreover, references relied upon to support a rejection under 35 U.S.C. § 103 must provide an enabling disclosure, i.e., they must place a claimed invention in the possession of the public, *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). However, Jackson et al and Fort fail to teach or suggest food products as set forth in claim 48, claim 60, or claim 64. In view of these failings, Jackson et al and Fort do not provide an enabling disclosure of the presently claimed food products and do not place the claimed food products in the possession of the public. Thus, Jackson et al and Fort do not support a rejection under 35 U.S.C. § 103.

It is therefore submitted that the dietary compositions defined by claims 48-74 are non-obvious over the Jackson et al reference in view of Fort, whereby the rejection under 35 U.S.C. §103 has been overcome. Reconsideration is respectfully requested.

Respectfully submitted,

  
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